No. 177.

Brief of Birney for P. E. (on mo.)

Filed Nov. 20, 1897.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA ET AL.

Brief for Plaintiff in Error in Opposition to Motion to Dismiss.

ARTHUR A. BIRNEY,
Attorney for Plaintiff in Error.

LAW REPORTER PRINT.

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This court has jurisdiction. The statement in the brief of counsel for defendant in error that "the plaintiff does not contend that any of the acts of Congress in question are invalid," is wholly without warrant. The assignment of errors made in this court in the brief on file should be enough to dispose of this assertion, and a glance at that brief will show that the only argument made is that the statutes under which the Commissioners acted were void. They acted, in making the assessment, not only under the act of the late Legislative Assembly of the District of Columbia passed under the authority of Congress (see Sections 199, 200, 201, 202, 203 and 204, Rev. St. D. C.), but also under the acts of Congress amendatory and adoptive of that act, and *all these acts* are open to the same criticism, that of failing to provide for notice to the land owner whose property is to be burdened.

Again, we submit that by the amendatory acts adopting

the provisions of this act of the Legislative Assembly as a part of the system of assessment law, it became a statute of the United States.

And if all this were not enough, the Commissioners of the District of Columbia in imposing the assessment in question were acting under color of the authority of the United States, and this suit attacks the validity of such authority.

This is clear when it is considered that the assessment in question was levied by the linear foot, and the only authority for such method is found in the Act of Congress of August 11, 1894, while the only authority in the Commissioners to assess in any way is given by the Act of Congress of June 10, 1879. The assignment of errors attacks these acts as *unconstitutional.* No question of *construction* has ever been suggested or argued.

That this is true, will appear from the statement of the Court of Appeals (Rec. 14) that the only question argued to them was whether the statutes in question "are constitutional and valid enactments."

Applying the rule stated by this court that—

> "whenever the power to enact a statute as it is by its terms, or is made to read by construction, is fairly open to denial, and is denied, the validity of such statute is drawn in question" (RR. Co. *vs.* Hopkins, 130 U. S. 210)—

it is submitted that the most casual inspection of the case as shown by the Record, and the brief already on file, will make it clear that the motion to dismiss is without merit.

ARTHUR A. BIRNEY,
Attorney for Plaintiff in Error.